

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Jim Bleyenbergh,	:	
Plaintiff	:	Civil Action 2:12-cv-00777
v.	:	Judge Smith
D&N Masonry, Inc., <i>et al.</i> ,	:	Magistrate Judge Abel
Defendants	:	

**ORDER and  
REPORT AND RECOMMENDATION**

Plaintiff Jim Bleyenbergh brings this action against defendants D&N Masonry, Inc., Don DeBello, Nick DeBello, and Cathy DeBello ("D&N and the DeBello defendants") and Venture One Construction, Inc. ("Venture") for recovery of wages. Plaintiff seeks back pay, treble damages, interest, and reimbursement of his costs and attorney fees incurred in prosecuting this action under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.*, Ohio's Minimum Fair Wage Standards Act, Ohio Rev. Code Chapter 4111, and the Minimum Wage Amendment to the Ohio Constitution. This matter was referred to the Magistrate Judge for a hearing and Report and Recommendation on plaintiff Jim Bleyenbergh's April 12, 2013 *ex parte* motion for prejudgment attachment of defendant D&N Masonry, Inc.'s assets under Rule 64 of the Federal Rules of Civil Procedure and Ohio Revised Code § 2715.045 (doc. 51).

A hearing was held before the Magistrate Judge on May 3, 2013.

On May 1, 2013, plaintiff served a subpoena on D&N Masonry, Inc. commanding it to appear and testify at the hearing before the Magistrate Judge and produce the documents listed in exhibit A to the subpoena. D&N Masonry, Inc. failed to appear at the hearing. Therefore, Don DeBello, President of D&N Masonry, Inc., is ORDERED to SHOW CAUSE on or before May 10, 2013 why D&N Masonry, Inc. should not be held in contempt for failing to comply with the subpoena.

For the reasons stated on the record, I find that defendant D&N Masonry, Inc. failed to demonstrate good cause for its failure to timely respond to plaintiff's March 15, 2013 admissions; accordingly, it is FURTHER ORDERED that these admissions are DEEMED admitted.

Plaintiff provided the court with an Application and Certificate for Payment from D&N Masonry, Inc., which was submitted on April 22, 2013 to Howard Immel, Inc. for work performed on the construction of a Walmart New Supercenter in South Euclid, Ohio. The Application and Certificate for Payment seeks payment of \$20,000. Howard Immel, Inc. has a retainage of \$54,702.52. The balance remaining, including the retainage, is \$497,084.55.

Plaintiff seeks \$14,557.00 for unpaid wages and statutory penalties/damages and \$18,000.00 in attorney fees. The Magistrate Judge RECOMMENDS that as monies become due and owing by Howard Immel, Inc. to D&N Masonry, the monies should be attached and paid to the Clerk of Court for the Southern District of Ohio. The Magistrate Judge further RECOMMENDS that it be ORDERED that no monies be paid

to D&N Masonry, Inc. by Howard Immel, Inc. until \$32,557.00 has been paid to the Clerk of Court.

Accordingly, the Magistrate Judge RECOMMENDS that plaintiff Jim Bleyenbergs April 12, 2013 motion for prejudgment attachment of defendant D&N Masonry, Inc.'s assets under Rule 64 of the Federal Rules of Civil Procedure and Ohio Revised Code § 2715.045 (doc. 51) be GRANTED.

The Clerk of Court is DIRECTED to mail a copy of this Order and Report and Recommendation by certified mail to:

Howard Immel, Inc.  
c/o Lauren Hentz, Contracts Administration  
1820 Raddison Street  
Green Bay, Wisconsin 54302

National Corporate Research  
Statutory Agent for Howard Immel, Inc.,  
4568 Mayfield Road, Suite 204  
Cleveland, Ohio 44121

Howard Immel, Inc.  
Walmart Superstore Construction Site  
1868 Warrensville Center Road  
South Euclid, Ohio 44121

If D&N Masonry, Inc. or Howard Immel, Inc. have objections to this attachment based on Ohio law or the United States Constitution, they must appear before the Magistrate Judge for a hearing on these objections on May 23, 2013 at 11:30 a.m. D&N Masonry, Inc. and Howard Immel, Inc. are DIRECTED to file notice of their objections and a request that the hearing be held as scheduled above on May 23, no later than May 17, 2013.

s/Mark R. Abel  
United States Magistrate Judge